

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2009-261-E

May __, 2010

In the Matter of:

South Carolina Electric & Gas Company
Request for Approval of Demand Side
Management Plan Including a Demand Side
Management Rate Rider and Portfolio of
Energy Efficiency Programs

ORDER APPROVING SCE&G'S
REQUEST FOR THE
ESTABLISHMENT AND APPROVAL
OF DSM PROGRAMS AND RATE
RIDER

This matter comes before the Public Service Commission of South Carolina (the “Commission”) pursuant to a request made by South Carolina Electric & Gas Company (“SCE&G” or the “Company”), under the authority of S.C. Code Ann. § 58-37-20 (1976, as amended), and pursuant to the terms of Commission Order No. 2009-104(A) for review of its proposed suite of demand side management (“DSM”) programs and the establishment of an annual rider to allow SCE&G’s recovery of costs and net lost revenue associated with its DSM programs along with an appropriate incentive for investing in such programs.

SCE&G filed its application in this proceeding on June 30, 2009. Timely motions to intervene were received from South Carolina Energy Users Committee (“SCEUC”), Friends of the Earth (“FOE”), CMC Steel South Carolina (“CMC Steel”), South Carolina Coastal Conservation League (“CCL”), Southern Environmental Law Center (“SELC”), and Frank Knapp, Jr., *pro se*. The South Carolina Office of Regulatory Staff (“ORS”) was automatically a party to this proceeding pursuant to S.C. Code Ann. § 58-4-10(B).

On August 27, 2009, SCE&G prefiled the direct testimony of witnesses Felicia Howard, David Pickles, Kenneth Jackson, and Scott Wilson. Updated direct testimony for Kenneth Jackson was filed on December 17, 2009. On January 7, 2010, ORS prefiled the direct testimony of Randy Gunn and Christina Seale, SELC and CCL prefiled the direct testimony of William Steinhurst and Thomas Lyle, and SCEUC prefiled the direct testimony of Kevin W. O'Donnell. On January 14, 2010, SCE&G's witnesses Howard, Pickles, Jackson and Wilson prefiled rebuttal testimony, and on January 21, 2010, SELC and CCL witnesses Steinhurst and Lyle prefiled surrebuttal testimony.

On March 31, 2010, the parties filed two separate settlement agreements with the Commission (collectively "Settlement Agreements"). The first settlement agreement (the "General Settlement Agreement") was between SCE&G, ORS, SELC, CCL, and Mr. Knapp and set forth those parties' agreements on multiple matters at issue in this proceeding. The second settlement agreement (the "Opt-Out Settlement Agreement") was between SCE&G, ORS, SCEUC, and CMC Steel and established a procedure for certain large customers of SCE&G to opt out of any offered DSM programs and associated DSM charges pursuant to the proposed rate rider.

A hearing was held on SCE&G's application on April 1, 2010. At the hearing, SCE&G was represented by K. Chad Burgess, Esquire; Mitchell Willoughby, Esquire; and Belton T. Zeigler, Esquire. ORS was represented by Shannon Bowyer Hudson, Esquire. SELC and CCL were represented by J. Blanding Holman, IV, Esquire; Gudrun Elise Thompson, Esquire; and Jill Mara Tauber, Esquire. FOE and SCEUC were represented by Robert Guild, Esquire and Scott Elliott, Esquire, respectively. CMC Steel and Mr. Knapp did not appear.

During the hearing, the General Settlement Agreement and the Opt-Out Settlement Agreement were entered into the record as Hearing Exhibits No. 1 and No. 3, respectively, without objection and are attached hereto and incorporated herein as Order Exhibit No. 1. Exhibit A to Hearing Exhibit No. 3 contained the revised direct testimony of SCEUC's witness, Mr. O'Donnell, which was also entered into the record of the hearing without objection. During the hearing, SCE&G's witnesses Howard, Jackson, and Pickles offered testimony from the stand in support of the Settlement Agreements. Also during the hearing, FOE stated for the record that while it was not a signatory to the General Settlement Agreement, it did not object to the Commission approving it.

I. BASIS FOR SCE&G'S APPLICATION

In Commission Order No. 2009-104(A), the Commission directed SCE&G to submit the results of a completed DSM analysis and its proposals for expanded DSM offerings to the Commission for review no later than June 30, 2009. In compliance with that order and in accordance with the terms of S.C. Code Ann. § 58-37-20, SCE&G initiated this proceeding. S.C. Code Ann. § 58-37-20 authorizes the Commission to adopt procedures that encourage electrical utilities to invest in cost-effective energy efficient technologies and energy conservation programs. The statute further provides that if the Commission chooses to adopt such procedures they must:

- Provide incentives and cost recovery for electric utilities that invest in energy supply and end-use technologies that are cost effective, environmentally acceptable, and reduce energy consumption or demand;

- Allow electric utilities to recover their costs and obtain a reasonable rate of return on their investment in qualified DSM programs sufficient to make those programs at least as financially attractive as construction of new generating facilities; and
- Establish rates and charges that ensure that the net income of an electrical utility after implementation of specific cost-effective energy conservation measures is at least as high as the net income would have been if the energy conservation measures had not been implemented.

S.C. Code Ann. § 58-37-20. This Commission has also found that South Carolina utilities should aggressively pursue and implement cost effective DSM and energy efficiency programs for the benefit of their customers. See Commission Order No. 2009-373, p. 5.

II. SCE&G's PROPOSED DSM PROGRAMS

In its application, as modified by the Settlement Agreements, the Company has proposed a suite of nine DSM programs based upon its analysis of potential DSM offerings and its assessment of the relative cost effectiveness, practicality of implementation and market receptivity to such programs. As Company witness Ms. Howard testified:

In 2008, SCE&G commissioned a comprehensive, “bottom up,” analysis to determine how it might expand its offering of DSM programs to assist customers interested in reducing their demand for electricity and improving their energy efficiency. To ensure that this analysis was conducted in a thorough and professional way, SCE&G hired one of the leading energy consulting firms nationally, ICF International (“ICF”). ICF was given a mandate to use its considerable national and international experience with DSM programs to consider any measures it believed to have potential for SCE&G’s system. ICF was instructed to perform careful cost/benefit screenings on selected programs. This was consistent with the Company’s commitment to implement only those programs and measures that showed a reasonable likelihood of producing verifiable and cost-effective benefits to customers and the system.

Tr. p. ____.

Mr. Pickles, SCE&G's independent consultant and Vice President of ICF testified that the primary objectives of ICF's analysis were to estimate the load impacts of implementing various individual DSM measures; to compare the cost of these measures against SCE&G's cost of generation, ensuring that the DSM measures are more economical; and to design and evaluate DSM programs (that promote groups of DSM measures), including assessment of implementation costs, customer participation in the programs, and the amount of measure adoption that would occur even if SCE&G did not have a program. Tr. p. ____.

Based upon ICF's analysis, SCE&G proposed in its application a suite of nine DSM programs. Of the nine programs proposed by SCE&G, seven target SCE&G's residential customer class and two target SCE&G's commercial and industrial customer classes.

As Mr. Pickles testified,

SCE&G's programs reflect an appropriate and timely response to recent increases in generation costs, changes in customer receptivity to DSM programs, constraints associated with the local infrastructure to support DSM, and the acceptable rate impacts associated with the recovery of DSM program costs. As suggested by the National Action Plan for Energy Efficiency and others, it is most appropriate for utilities seeking to offer new large scale DSM programs to do so in a measured and deliberate fashion. This gives the local market infrastructure, the utility, regulators, trade allies, and other participants the time needed to ensure that the programs are effectively and prudently implemented, and to ensure that customers value the DSM programs and are willing to accept the rate increases necessary to support them. Additional and or more complex programs might be considered for implementation, but only after success with the initial portfolio of programs.

Tr. p. ____.

As part of the General Settlement Agreement, ORS, along with intervenors, SELC, CCL, and Frank Knapp, Jr., all recommended that this Commission approve SCE&G's energy efficiency programs as proposed in the application subject to certain modifications as set forth in the General Settlement Agreement. Specifically, SCE&G agreed to expand the initial implementation phase of its Residential Energy Information Display program, if approved, to

include additional customers from the Company's small general service class of customers which could effectively use the display technology selected. Based upon the results of that initial implementation phase, SCE&G agreed to consider the feasibility of renaming and expanding the program to include the small general service class of customers in the full implementation and roll out of the program. Hearing Exhibit No. 1, p. 6. In addition, SCE&G has committed to developing a DSM program designed specifically for low-income customers in its service territory. This program will be submitted for review and comment to an Advisory Group, discussed in more detail below, and will be implemented in program year two or three.

In addition to the proposed DSM programs, SCE&G has requested the authority and flexibility to modify, amend, terminate and/or add any measure or program to its suite of programs without the requirement of seeking prior Commission approval to do so. In support of this request, Ms. Howard testified:

Permitting SCE&G to have the authority to alter its DSM measures and programs as requested will ensure that they can be routinely updated in response to changing needs of the customers and the system. Such flexibility will allow for faster evolution of programs to meet customer expectations, and will make for a more efficient and effective suite of programs in the long run.

Tr. p. ___. Ms. Howard also emphasizes that all such modifications or changes would be reported annually to the Commission and ORS as part of the annual review filings. Tr. p. ___. Mr. Pickles and Mr. Gunn agreed and testified that such flexibility is reasonable and is generally being approved in other jurisdictions. Tr. p. ___; Tr. p. ___. ORS and the other signatories to the Settlement Agreements have agreed that this flexibility, as requested in SCE&G's application, should be approved.

For the reasons set forth above, and in light of the Settlement Agreements, the Commission finds that SCE&G's proposed suite of DSM programs represents an appropriate and

reasonable approach for implementing DSM measures that are in the public interest and are consistent with S.C. Code Ann. § 58-37-20. The Commission further finds that the flexibility in modifying this suite of programs requested by SCE&G will aid the Company in implementing its DSM programs in an efficient manner and will provide it with the ability to adjust these programs based on evolving market conditions and information. The Commission directs that SCE&G include information regarding any and all such modifications in its annual filing with the Commission and ORS.

III. RATE RIDER MECHANISM

Through its application as modified by the terms of the General Settlement Agreement, SCE&G also seeks approval of a rate rider to allow it to recover: (1) its actual program costs associated with developing, implementing and administering its DSM programs; (2) net lost revenues resulting from these programs; and (3) a shared savings incentive. S.C. Code Ann. § 58-37-20. The details of the rate rider mechanism and its implementation are set forth in detail in the General Settlement Agreement and in Exhibits No. 1 and 2 to the document, which are incorporated by reference to this Order.

a. Program Costs

S.C. Code Ann. § 58-37-20 makes provisions for an electric utility to be permitted to recover its costs and obtain a reasonable rate of return on its investment in qualified DSM programs sufficient to make those programs at least as financially attractive as construction of new generating facilities. As Company witness Kenneth Jackson testified,

The rate rider has been developed to allow the Company to recover its reasonable and prudent costs incurred to implement and operate the DSM programs, including administrative and general costs and overheads. These costs will be deferred as a regulatory asset, and for calculating the rider recovery amount, they will be amortized over a five-year period.

Tr. p. _____. The Company proposes the five-year period amortization as reasonably balancing the need and interest of the Company in the timely recovery of DSM expenses with the interest of customers in spreading out the recovery of these costs over time. Tr. p. _____. Mr. Jackson also testified that “[l]onger amortization periods require the Company to hold larger balances of unrecovered DSM costs, increasing its carrying costs and risks while placing larger demands on its ability to raise capital.” Tr. p. _____. In addition, under the terms of the General Settlement Agreement, ORS and the other signatories agree that SCE&G should be allowed “to defer and amortize into the rate rider calculation all prudently incurred costs for the programs . . . over five years with carrying costs at the Company’s weighted average cost of capital.” General Settlement Agreement, p. 8.

For the reasons stated above, the Commission finds that it is reasonable, in the public interest, and in accordance with S.C. Code Ann. § 58-37-20 that SCE&G be allowed to recover all reasonable and prudent costs incurred in implementing, operating, and administering the approved DSM programs under the terms set forth in the General Settlement Agreement, which includes a five-year amortization of those costs with carrying costs at the Company’s weighted average cost of capital.

b. Net Lost Revenue

With regard to net lost revenues, S.C. Code Ann. § 58-37-20 makes provisions for the net income of an electrical utility after implementation of specific cost-effective energy conservation measures to be at least as high as the net income would have been if the energy conservation measures had not been implemented. Under the terms of the General Settlement Agreement, the parties agreed that SCE&G should be permitted to recover net lost revenues resulting from implementation of its DSM programs through the rate rider. Net lost revenues under the

settlement agreement are defined as “retail revenue losses incurred as a result of lost retail sales due to SCE&G’s new energy efficiency measures, net of fuel and other variable operation and maintenance costs.” General Settlement Agreement, p. 8. As testified by Mr. Jackson, net lost revenue will be calculated for each upcoming period based on the forecasted level of customer participation in each DSM measure and will reflect the reduction in demand charges and MWH sales that are calculated to occur as a result of customer participation in each DSM measure exclusive of the reductions that would have happened in the absence of the measures. Tr. p. ____.

At the end of each review period, the net lost revenue for that review period will be recalculated and trued-up using actual market penetration data. Tr. p. ____.

Any differences in the calculation of forecasted net lost revenue as compared to calculations based on actual penetration rates will be reflected as an increase or decrease to the revenue required to be collected under the rate rider in the prospective review period. Similarly, when new Evaluation Measurement & Verification (“EM&V”) data is produced adjusting the kW or kWh savings per measure implemented, the lost revenue for the current period will be trued-up based on that data with the adjustment reflected in the rate rider calculation for the prospective review period. As set forth in the General Settlement Agreement, net lost revenues shall not include interest or carrying costs, and no net lost revenues shall be recovered through the rate rider for research and development activities or for other programs whose primary purpose is that of promoting general awareness and education concerning energy efficiency and not the implementation of specific measures by customers. General Settlement Agreement, p. 9. Recovery through the rate rider of net lost revenues pertaining to a group of measures adopted by customers in prior program years shall cease upon the implementation of new retail electric rates in a general rate case proceeding to the extent that

those new rates explicitly or implicitly allow the Company to recover the net lost revenues associated with the implementation of those measures in those prior periods.

The Commission finds that it is reasonable, in the public interest, and fully consistent with S.C. Code Ann. § 58-37-20 that SCE&G be allowed to recover net lost revenues under the terms set forth in the General Settlement Agreement.

c. Incentive

S.C. Code Ann. § 58-37-20 allows rates established by the Commission under its provisions to be sufficient to make the utility's DSM programs at least as financially attractive as construction of new generation facilities. To accomplish this, the General Settlement Agreement provides that the rate rider shall include a shared savings incentive equal to 6% multiplied by the estimated net benefits of each energy efficiency program calculated using the Utility Cost Test. As the General Settlement Agreement states, a shared savings incentive of 6% provides the Company with a reasonable financial incentive to implement effective DSM programs while providing customers with 94% of the program net benefits. As Mr. Pickles testified, an incentive of this type is consistent with incentives adopted by other jurisdictions and is reasonable. Tr. p. ____.

In ascertaining the amount of the incentive, actual net program benefits will be calculated for the measures installed or adopted in a given year by multiplying the kWh and kW savings over the measurement units' lives by the annual per kWh and kW avoided costs used in calculating the initial incentive, and subtracting the associated program costs for those measures. The results will be discounted to present value. Until EM&V results become available, the incentive will be based on estimated net program benefits using data from the South Carolina Measures Library to the extent available. After verified results become available, true-ups will

occur during the annual filings between the estimated and actual net program benefits so that the incentive ultimately to be recovered for a given program year is based on the actual net program benefits derived from EM&V results. No interest or carrying costs are allowed for the incentive true-up. Incentives shall not be recovered through the rate rider for programs related to research and development activities and programs with the primary purpose of promoting general awareness and education only and which do not involve the implementation of specific measures. Under the General Settlement Agreement, the incentive earned by the Company will be amortized over five years without interest or carrying costs and added to the calculation of the Company's annual rider.

The Commission finds that it is reasonable, in the public interest, and fully consistent with S.C. Code Ann. § 58-37-20 that SCE&G be allowed to recover an incentive under the terms set forth in the General Settlement Agreement. Attached to the General Settlement Agreement, as Exhibit No. 2, is a copy of the rider to retail rates that incorporates the provisions agreed to by the parties to that agreement. This rate rider is hereby approved and shall become effective with the first billing cycle for September 2010.

IV. EVALUATION, MEASUREMENT, AND VERIFICATION

Under the terms of the General Settlement Agreement, the Parties agreed to a procedure for the EM&V of the cost and benefits of SCE&G's DSM programs. SCE&G has agreed that no later than thirty (30) days prior to the initial date of making DSM programs available to the public, it will submit an EM&V plan for its programs and measures to the parties to the General Settlement Agreement for review and comment. The EM&V plan will set forth industry-accepted program evaluation protocols to allow for an accurate determination of program costs and benefits, including a provision that evaluations be conducted in each program year, unless

otherwise agreed upon by ORS and SCE&G, in order to ensure the sound design, delivery and continuous improvement of programs. General Settlement Agreement, p. 7. The EM&V plan will reflect an industry-accepted term of measurement and evaluation for each program. The parties to the General Settlement Agreement will then provide written comments concerning the EM&V plan to SCE&G within fifteen days of submission of the plan. The EM&V plan will provide for EM&V to be conducted either: (1) by an independent third party evaluator selected by SCE&G after review with ORS or (2) at ORS's election and with SCE&G's agreement all or part of the evaluation may be conducted by ORS. If the parties are unable to agree regarding the provisions and terms of the EM&V plan, a party may petition the Commission for a hearing to resolve any dispute. New EM&V results will be due no later than six months after each reporting period, unless otherwise agreed upon by ORS and SCE&G.

The Commission finds that it is reasonable and in the public interest that EM&V of SCE&G's DSM programs be conducted in this manner and SCE&G is directed to develop and implement its EM&V plan as set forth in the General Settlement Agreement.

V. ANNUAL FILINGS

The General Settlement Agreement sets forth certain detailed provisions regarding annual filings for review of SCE&G's DSM programs. Under these provisions, SCE&G will be required to make annual filings before the Commission where the programs, net lost revenues, program costs, incentive, net program benefits and other items as appropriate will be set forth. The review period for these annual filings will be the period beginning December 1st and ending twelve months later on November 30th. The first annual filing will occur in January 2011 following the approval of SCE&G's DSM programs with subsequent annual filings occurring

each January of the following years. A more detailed chart of the annual filings is set forth in the General Settlement Agreement at page 5.

The Commission finds that it is reasonable and in the public interest that SCE&G present this data to the Commission on an annual basis. SCE&G is directed to make annual DSM filings as set forth in the General Settlement Agreement.

VI. ADVISORY GROUP AND ENERGY EFFICIENCY POTENTIAL STUDY

In addition to the above matters, the General Settlement Agreement provides that SCE&G will establish an energy efficiency advisory group (the “Advisory Group”). The Advisory Group shall include ORS and SCE&G, a representative from SELC/CCL, a representative from the South Carolina Small Business Chamber of Commerce as well a representative each from the low-income and industrial sectors. The Advisory Group will meet over a three-year program term, and will meet three times during the first year following its establishment and no less than twice per year thereafter. The role of the Advisory Group is to consider and make recommendations to SCE&G with respect to efficiency potential studies, new program ideas, modifications to existing programs, outreach and education programs and funding, and EM&V plans. General Settlement Agreement, p. 13.

The Commission finds that the creation of the Advisory Group is reasonable and in the public interest and directs SCE&G to establish and implement the Advisory Group as set forth in the General Settlement Agreement.

The General Settlement Agreement also provides that SCE&G will prepare and present to the parties to the agreement and the Advisory Group a study of the energy efficiency potential for SCE&G’s service territory. This potential study will be prepared with a forecast review

period that conforms to the Integrated Resource Plan requirements. General Settlement Agreement, p. 11. The potential study will be prepared by consultants retained by SCE&G and will include estimates of the technical potential for energy efficiency, the economic potential for energy efficiency, the achievable potential for energy efficiency, and the program potential for energy efficiency. The cost of the study shall be treated as a program cost subject to recovery under the rate rider.

The Commission finds that it is reasonable and prudent to propose such a study and that the cost of the study is a valid DSM expense.

VII. TREATMENT OF INDUSTRIAL CUSTOMERS

In its application, SCE&G proposed a mechanism for permitting certain qualifying industrial customers to opt out of its suite of DSM programs and the associated charges established under the rate rider. The Opt-Out Settlement Agreement clarifies and simplifies this opt-out provision. It removes the kW or kWh criteria for qualifying for the opt-out and instead makes opt-out available to all customers with certain industrial Standard Industrial Classification or North American Industry Classifications System codes. Pursuant to the Opt-Out Settlement Agreement, all industrial customer¹ accounts may opt out of the DSM and Energy Efficiency/Demand Response programs and costs at issue in this proceeding by notifying SCE&G in writing that the customer has implemented or will implement alternative DSM and Energy Efficiency/Demand Response programs at its own expense and does not wish to

¹ For purposes of this opt out, the parties have stipulated that an industrial customer is a member of that class of customers meeting the industrial classification found in the current Rate 23, provided, however, that the 1,000 kW threshold shall not apply. Furthermore, the parties have stipulated that all current members of SCEUC shall qualify as industrial customers for purposes of the opt-out.

participate in SCE&G's program. Such notification shall be made on a form provided by SCE&G and shall be effective on and after the date that such form is received by SCE&G.

SCEUC's witness, Kevin O'Donnell, testified in support of allowing industrial customers to opt out of DSM programs and charges. As Mr. O'Donnell testified:

Intense competition has forced manufacturers to actively seek every possible way to cut costs and stay in business. It is very likely that manufacturers have already implemented energy efficiency measures that have created ongoing energy efficiency savings that may easily eclipse anything that SCE&G is proposing in the current application. If manufacturers are now forced to participate in SCE&G's EE/DSM programs after they have already completed past energy efficiency projects, they will essentially be "double-dipped" on energy efficiency costs.

Tr. p. __. In addition, SCEUC notes that the terms and provisions of the Opt-Out Settlement Agreement regarding the opt out of industrial customers is in accord with prior opt-outs approved by this Commission with respect to other utility DSM initiatives. See Order No. 2009-373 in Docket No. 2008-251-E; Order No. 2010-79 in Docket No. 2009-226-E.

Based on the evidence in this proceeding, and the Commission's precedent, we find that SCE&G's industrial customers should be allowed to opt out of SCE&G's DSM programs and charges as set forth in the Opt-Out Settlement Agreement. By making the procedure for opting out simple and easy to administer for both the customers and SCE&G, it will support business retention and economic development.

IT IS THEREFORE ORDERED THAT:

1. SCE&G's application in this proceeding, as amended by the General Settlement Agreement and the Opt-Out Settlement Agreement, is approved.
2. The General Settlement Agreement and the Opt-Out Settlement Agreement are incorporated herein by this reference, are found to be a reasonable resolution to the issues in this

case, are in the public interest and are therefore hereby adopted and approved. The Commission also approves the tariff sheet attached to the General Settlement Agreement as Exhibit 2 and entitled “Rider to Retail Rates – Demand Side Management Component.”

3. SCE&G may recover its costs incurred in providing DSM programs, net lost revenues, and a shared savings incentive of 6% of the net benefits of the DSM programs through the rate rider attached as Exhibit 2 to the General Settlement Agreement. DSM program costs and the shared savings incentive shall be recorded on the Company’s books as a regulatory asset and amortized over a five year period.

4. SCE&G shall initiate annual filings as set forth herein beginning in January 2011 and in each subsequent January through the life of the DSM programs.

5. Industrial customers, as defined herein, may opt out of SCE&G’s DSM programs in accordance with the terms of the Opt-Out Settlement Agreement.

6. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Elizabeth B. “Lib” Fleming, Chair

ATTEST:

John E. “Butch” Howard, Vice Chair

(SEAL)